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6-5.010

Introduction

Civil tax litigation in the United States District Courts and the state courts is supervised or handled by six Civil Trial Sections. The Civil Trial Sections are generally responsible for cases that arise within their respective geographic areas. In addition, the Civil Trial Sections for the Central and Eastern Regions have nationwide jurisdiction over certain cases of special interest.

Trial responsibility normally reposes with the United States Attorney in cases arising under 28 U.S.C. § 2410 (except for tax protester cases, quiet title actions raising substantive issues, and interpleader litigation) and in summons enforcement and bankruptcy litigation directly referred to the United States Attorneys by the IRS.

In refund litigation and in cases referred by IRS to the Tax Division, trial responsibility normally reposes in the Civil Trial Sections.

For administrative and informational purposes, the Division should advise the United States Attorney of any appearance in the district and should keep the United States Attorney advised of the progress of such matters by forwarding to him/her copies of correspondence and pleadings served on opposing counsel. The United States Attorney should immediately forward to the assigned Tax Division trial attorney copies of all correspondence, pleadings, briefs, notices (including scheduled court appearances), etc., received and served on the United States Attorney, unless such communication clearly indicates service on such civil trial attorney. The United States Attorney should also advise the appropriate civil trial attorney of any informal information received that may have a bearing on the just disposition of the case. Where civil matters are assigned to the United States Attorney, he/she will be responsible for the entire proceeding, including the filing of all pleadings and representation at all proceedings and will keep the Tax Division advised in the manner as set forth in this Manual.

However, nothing contained in this Manual shall diminish the authority of the Assistant Attorney General, Tax Division, to exercise his/her prerogative to reassign any civil tax case within the jurisdiction of the Tax Division.

6-5.110 Suits to Collect Tax and Foreclose Tax Liens -- Generally

Tax collection suits are brought by the Department at the request of the IRS pursuant to 26 U.S.C. § 7401 and are usually handled by Tax Division attorneys. If asked to file the complaint on behalf of the Tax Division, the United States Attorney should promptly forward advice as to the date the complaint was filed.

Occasionally, the local IRS office may contact the United States Attorney's Office (USAO) directly with a request to institute suit due to time limitations, but complaints should not be filed on an emergency basis without prior approval of the Chief of the appropriate Civil Trial Section.

6-5.111 Service of Process Abroad

In any tax case in which it is determined that service of a summons and complaint should be attempted outside of the United States, the matter should be referred to the Chief of the appropriate Civil Trial Section and the United States Attorney should not seek to obtain such service without prior written approval of the Chief of the appropriate Civil Trial Section.

6-5.112 Writ of Ne Exeat

A writ of ne exeat republica is issued by a court to restrain a person from going beyond the jurisdiction of the court until the person has satisfied a claim or has given bond for the satisfaction of the liability. Writs of ne exeat republica are expressly authorized by 26 U.S.C. § 7402(a). This remedy is used infrequently and should not be sought without prior written approval of the Chief of the appropriate Civil Trial Section.

6-5.113 Public Sale; Bidding by United States Attorney

In a lien foreclosure suit, the court may order the sale of the property at either a public or private sale subject to the procedures provided in 28 U.S.C. § 2001 et seq. In addition to these procedures for the sale of property, a sale of property may be held pursuant to a stipulation entered into by all parties.

Where it appears likely that the property may be sold at a judicially ordered public sale for less than its fair value and the liens of the United States are prior to all other liens, the United States Attorney should seek from the Treasury Department an authorization to bid on the property on behalf of the United States in accordance with 31 U.S.C. § 3715. Upon receipt of the proper appointment, instructions will be given the United States Attorney concerning the amounts that should be bid for the property and other steps that should be taken to protect the government's interests. The deed to property so purchased for the United States will be taken in the name of the United States. The United States Attorney should have the deed recorded promptly and take any other action required under state law to protect the government's title.

6-5.120 Intervention by the United States in Court Actions

If the United States is not party to a civil action, the United States may intervene in such action to assert a federal tax lien on property which is the subject of the action. *See* 26 U.S.C. § 7424. Where the United States intervenes in a state court action, it has the same right of removal as in cases where it is named a party to an action under 28 U.S.C. § 2410(a).

Intervention may be commenced only with the authorization of the District Counsel and at the direction of the Chief of the appropriate Civil Trial Section.

If local IRS officials request the United States Attorney directly to intervene because of an emergency, prior approval should be sought from the Chief of the appropriate Civil Trial Section.

6-5.130 Order for Entry to Effect Levy

The IRS must obtain a warrant before entering constitutionally protected premises to seize property for the payment of taxes. Cases involving orders of this type will be referred directly to the United States Attorneys. District Counsel has been instructed to prepare the pleadings -- standard forms consisting of an application, affidavit and proposed order -- and to present the pleadings to the USAOs for review and submission to the United States District Court. *See* Tax Resource Manual at 22 *et seq.* If the case requires any substantial deviation from these forms, please consult immediately with the Chief of the appropriate Civil Trial Section.

Upon receipt of the material from District Counsel, the United States Attorney should expeditiously review the material to determine whether the legal standard to effect a Writ of Entry has been met. While the circumstances need not be exigent, a determination should be made that the taxpayer is, indeed, recalcitrant, and that the revenue officer has been unable to gain voluntary admittance to the property for purpose of seizure. The Assistant United States Attorney to whom the case is assigned for processing should discuss the matter with the revenue officer to assure that the affidavit is complete and accurate and to ascertain whether there are any unusual features of the case which may lead to denial of the writ. In some cases, for example, the taxpayer has entered into arrangements with the IRS for payment of the outstanding taxes and was not in default. For obvious reasons, orders should not be sought under such circumstances.

In order to effectively support the collection efforts of the IRS, it is important that the proposed pleadings be reviewed and submitted to the court in an expeditious manner.

6-5.210 Summons Litigation -- Enforcement Cases -- Direct Referrals

Requests for enforcement of most administrative summonses, except for cases raising novel or sensitive issues, generally will be referred directly to the United States Attorneys by the District Counsel. District Counsel will forward to the Tax Division summons cases of a sensitive nature or raising novel issues, including summonses involving:

- attorneys
- churches
- newspapers and newspaper reporters
- tax accrual workpapers (tax pool analysis)
- foreign document requests
- treaty partners or other matters with international implications
- John Doe summonses
- Section 6050I
- novel/complex Fifth Amendment claims
- computer software and other non-traditional items
- state/local agencies and courts
- designated summonses
- consent directives
- other unique issues as may be determined from time to time

With respect to summonses directly referred to the USAO, it is not necessary to obtain authorization from the Tax Division prior to instituting court proceedings *except* if a case involving sensitive or novel issues, as described above, is directly referred to the United States Attorney by District Counsel. The usual procedure for enforcing a summons is to file a petition requesting an order to show cause why the summons should not be

enforced. *See* Tax Resource Manual at 26 *et seq.* Attachment of the summoned person under 26 U.S.C. § 7604(b) should not be utilized as a means of seeking enforcement of a summons without receiving the prior written authorization of the Chief of the appropriate Civil Trial Section.

After review, the Tax Division may refer to the United States Attorney for handling some cases referred to the Division by District Counsel.

6-5.212 Commencement of the Proceeding

Summons enforcement proceedings are summary in nature and are usually commenced by filing a petition, supported by a declaration of the examining/investigating agent, and a proposed order to show cause why the summons should not be enforced. The IRS District Counsel will usually prepare and forward the pleadings to the United States Attorney along with the request for enforcement.

6-5.213 Prosecution Under 26 U.S.C. § 7210

Prosecution under 26 U.S.C. § 7210 for failure to honor an IRS summons cannot be initiated without specific written authorization from the Chief of the regional Criminal Enforcement Section. These cases should be processed by the IRS and referred to the Tax Division in the same manner as other general program criminal cases.

6-5.220 Actions or Petitions to Quash or Enjoin IRS Summonses

The general rule is that no action may be brought to quash an IRS summons, or to enjoin the IRS from seeking to enforce such a summons by appropriate court action. *See Reisman v. Caplin*, 375 U.S. 440 (1964).

Section 7609, 26 U.S.C., contains a legislative exception to the holding of *Reisman v. Caplin* for summonses issued to specifically enumerated third-party recordkeepers. The person to whom the records relate is given notice that a summons has been issued to a "third-party recordkeeper," a term defined as including financial institutions, attorneys, and accountants. The noticee can stay compliance with a third-party recordkeeper summons by commencing a proceeding to quash in the appropriate District Court within 20 days of the date on which notice is given, mailing a copy of the petition to the recordkeeper and to the office of the IRS designated in the notice. The procedural rules pertaining to a petition to quash are jurisdictional and a motion to dismiss should be filed upon failure to follow these provisions meticulously.

Proceedings to quash may also be instituted with respect to IRS a formal document request under 26 U.S.C. § 982 for foreign-based documents. These proceedings are similar to 26 U.S.C. § 7609 proceedings, except that the taxpayer is allowed 90 days from the date of the request to initiate the proceeding.

A proceeding to quash is a civil action subject to the normal filing fee and to the provisions of Rule 4 of the Federal Rules of Civil Procedure concerning service of the summons and complaint. The filing of a petition to quash under 26 U.S.C. § 7609 or § 982 stays compliance with the summons or document request. Accordingly, it is generally in the best interest of the Government not to insist that the service of process rules be followed in all technical respects, absent compelling reasons to the contrary.

6-5.221 Direct Referrals

Petitions to quash brought under 26 U.S.C. § 7609 (*see* Tax Resource Manual at 31) will be directly referred to the United States Attorney for defense by the District Counsel except for cases raising sensitive or novel issues, as described in USAM 6-5.210. Upon receipt of a petition to quash, your office should send a copy to the District

Counsel and should send a copy to the Chief of the appropriate Civil Trial Section if it apparent that the petition raises sensitive or novel issues.

Petitions under § 26 U.S.C. 982 to quash foreign document requests will generally be handled by Tax Division attorneys.

With regard to other types of suits to quash or enjoin an IRS summons, the United States Attorney should notify the Tax Division immediately and furnish copies of the pleadings. If the suit is brought in a state court and the United States or an IRS official is named, the United States Attorney should remove the action to the federal court immediately. In any suit in which neither the United States nor any IRS official is named, the United States Attorney should not become involved in any manner in the action.

Whenever an action is filed to enjoin the IRS or a summoned witness, or to quash a summons or a document request, the IRS official who issued the summons or document request should be advised immediately so that a determination can be made whether to enforce judicially the summons or to moot a defective summons or document request.

6-5.230 Adverse Decisions

The Chief of the appropriate Civil Trial Section should be notified of adverse summon-related decisions as soon as practicable. All appeals in all tax cases, including summons cases, will be handled by the Appellate Section of the Tax Division. *See* USAM 6-5.700 *et seq.* Exceptions to this policy must be approved by the Assistant Attorney General of the Tax Division.

6-5.240 Litigation Support Relating to Summons Cases

The Tax Division is available to provide assistance in any particular case. Assistance should be requested from the Chief of the appropriate Civil Trial Section. In addition, "A Primer on IRS Summons Enforcement," prepared by the Tax Division's Appellate Section, is available on the USANet under the name "TAXPRIMR.ZIP."

6-5.300 Suits Against the United States or its Officers and Employees -- Generally

The general rule is that upon being served with a summons and complaint in a suit involving the internal revenue laws or otherwise connected with tax administration, a copy of the summons and complaint should be forwarded to the appropriate Civil Trial Section of the Tax Division and to the local IRS District Counsel. While the general rule applies to interpleaders or suits in the nature of interpleaders and quiet title actions brought by tax protesters or raising substantive tax issues, different procedures apply to other types of § 2410 actions as provided in USAM 6-5.323. Special additional rules for tax refund suits are set out at USAM 6-5.620 *et seq.*

A. Jeopardy Assessment Cases. In suits under 26 U.S.C. § 7429 for review of jeopardy assessments, the appropriate Civil Trial Section should immediately be notified by telephone of the commencement of the case since an expedited hearing within 20 days is required by statute. In these cases, we request notification within one working day of day on which the United States Attorney receives notice of the commencement of suit.

B. TRO/Preliminary Injunction Cases. Notification by telephone of the appropriate Civil Trial Section is also essential if a hearing is set on a temporary restraining order or an early hearing is set on a preliminary injunction. Prompt notification of the commencement of injunction suits is necessary to ensure that the interests of the United States are protected. Consent to maintaining the status quo or to entry of a temporary restraining order should not be given without prior authorization from the Chief of the appropriate civil trial section.

6-5.320 Actions Under 28 U.S.C. § 2410 -- Allocation of Responsibilities

Suits under 28 U.S.C. § 2410 for interpleader or in the nature of interpleader and quiet title actions filed by tax protesters or otherwise raising substantive tax issues will be handled by the Tax Division. Other § 2410 actions are the responsibility of the United States Attorney.

6-5.322 Nature of the Suit

Under 28 U.S.C. § 2410 the United States has consented to be sued in any suit instituted in a federal or state court having jurisdiction of the subject matter (1) to quiet title to; (2) to foreclose a mortgage or other lien upon; (3) to partition; (4) to condemn; or (5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien. By this statute, the United States has waived its sovereign immunity to suit, subject to specified conditions which must be strictly complied with as a jurisdictional prerequisite for maintenance of the suit.

Where a judicial sale is held and the tax lien of the United States is discharged, the United States may redeem the sold realty within 120 days from the date of sale, or within such longer period as may be allowed under local law. A revolving fund has been authorized for such purpose. The amount which the United States must pay in the exercise of its right of redemption, whether it relates to a sale under 28 U.S.C. § 2410(c) or a sale in foreclosure other than the plenary judicial proceedings (26 U.S.C. § 7425(d)(1)), is set forth in a formula contained in 28 U.S.C. § 2410(d). If you deem that redemption is advisable, please contact the Chief of the appropriate Civil Trial Section.

Where the United States asks, by way of affirmative relief, for foreclosure of its own lien, and property is sold to satisfy a first lien held by the United States, the United States may bid at the sale such sum, not exceeding the amount of its claim with expenses of sale, as may be directed by the IRS. See USAM 6-5.113.

6-5.323 Procedures

A. Notice to Tax Division and IRS. In foreclosure, partition, condemnation and, except as provided in paragraph B, most quiet title actions, it is not necessary to forward the summons and complaint to the local District Counsel or the Tax Division, but the Tax Division should be notified by memorandum or letter of the filing of the suit and the date of service and the IRS Special Procedures Function should be asked to provide the information necessary to prepare an answer. If there is a defect in the pleadings served on the Attorney General, or if no service or improper service was made on the Attorney General, the Tax Division's Lien Unit will advise you of this, and the pleadings or improper service must be cured by amendment and/or proper service. Contact the Lien Unit prior to preparing an answer or motion to dismiss if you have not received notice regarding service on the Attorney General. A copy of the government's answer should not be forwarded to the Tax Division. It is unnecessary for the United States Attorney to correspond further with the Tax Division with regard to these cases unless an offer in compromise is submitted or an appellate issue arises. Any questions should be directed to the Tax Division's Lien Unit.

B. Quiet title actions. Tax protesters frequently use quiet title actions in an attempt to remove federal tax liens from real property. These types of quiet title actions are brought either by the taxpayer or by the nominee who is holding title on behalf of the taxpayer. The taxpayer is often attempting (improperly) to contest the merits of the tax assessment. The plaintiff may properly use Section 2410 to contest the procedural validity, or, in the case of a nominee, to contest the validity of the IRS' alter ego/nominee determination. These quiet title actions and any other quiet title actions raising substantive tax issues should be referred to the appropriate Civil Trial Section for handling.

C. Offer in Compromise. If an offer in compromise is made, promptly submit the matter to the Chief of the appropriate Civil Trial Section, with your recommendation and sufficient supporting data. A copy of any

compromise offer together with a copy of the complaint, should at the same time be forwarded to the local IRS District Counsel. This procedure is not applicable to those applications for release of the government's right to redemption with respect to which authority has been delegated to United States Attorneys. *See* USAM 6-6.140 and 6-6.700. See also the Tax Resource Manual at 51 et seq. for the appropriate form application and instructions.

D. Appeal. If an appeal is taken by another party to the proceeding, the United States Attorney should promptly advise the Chief of the appropriate Civil Trial Section and inform us of the time limitation involved. If a decision is rendered adverse to the government on an issue contested by your office, please submit your recommendation with sufficient data to evaluate the question of appeal.

E. Priority. Please note that 26 U.S.C. § 6323 will govern the determination of the priority of the federal tax lien in most of these cases. The Chief of the appropriate Civil Trial Section should be contacted should any interpretative problems arise concerning the priority to be accorded to the tax lien. The District Counsel of the IRS can also be called upon for advice.

F. Closing. The United States Attorney should notify the IRS Special Procedures Function when the case is closed.

6-5.324 Removal of Actions from State Courts

Most cases under 28 U.S.C. § 2410 are filed in the state courts. The United States as a general rule does not seek to remove such cases to the federal courts unless there is a real dispute respecting the rights of the United States and a substantial amount or important principle is involved. Where it appears to be desirable to remove an action involving tax claims to a federal court and circumstances permit, the matter should be discussed with the Tax Division. Since 28 U.S.C. § 1446(b) provides only 30 days in which to remove a case, the suit should be brought to the attention of the Tax Division at the earliest possible moment. The judgment of the United States Attorney is relied upon in deciding whether to remove, but removal should not be effected without prior approval of the Chief of the appropriate Civil Trial Section.

6-5.330 Injunction Actions

Section 7421(a), 26 U.S.C., provides, generally, that no suit for the purpose of restraining the assessment of any tax shall be maintained by any person in any court, whether or not such person is the person against whom such tax was assessed. In light of 26 U.S.C. § 7421, injunctive relief may be had only upon satisfaction of the twofold test laid down in *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962).

Since injunction cases are often set for hearing on very short notice, the Tax Division, in some instances, will consent to a status quo arrangement whereby the District Director will agree to take no collection activity for a specified period of time in order to afford the IRS an opportunity to conduct an investigation and prepare a defense letter. On occasion, however, it may be necessary to consent to a temporary restraining order to accomplish the same purpose. *See* Fed. R. Civ. P. 65(b). In either case, prior authorization should be obtained from the Chief of the appropriate Civil Trial Section. Of course, any suit attempting to restrain the collection of taxes must be served upon the Attorney General. The United States Attorney, however, should immediately notify the appropriate Civil Trial Section when served with such a suit; if a temporary restraining order is set for hearing or an early hearing on a preliminary injunction is set, please telephone the Chief of the appropriate Civil Trial Section so that the necessary pleading can be prepared and forwarded to the United States Attorney.

6-5.340 Suits Under the Freedom of Information Act and the Privacy Act

Suits under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, against the IRS and against the Tax Division are handled exclusively by the Tax Division's Civil Trial Section, Eastern Region.

Because under 5 U.S.C. § 552(a)(4)(C) an answer or other pleading to the complaint must be served within 30 days after the complaint is served upon the defendant, it is imperative that the Civil Trial Section, Eastern Region, receive immediate notice of the filing of such a suit. Specifically, the United States Attorney's Office should immediately notify that section by telephone when served with the complaint in such a suit. The appropriate pleading will be prepared by the Tax Division and forwarded to the United States Attorney for filing. Suits under the Privacy Act against the IRS and the Tax Division are also handled by the Civil Trial Section, Eastern Region, and when the USAO is served with the complaint in such a suit, immediate written notice thereof should be given to that section. The appropriate responsive pleading will be forwarded to the United States Attorney.

6-5.350 Subpoenas Served on Employees of the IRS

Frequently, subpoenas are served upon revenue agents and other employees of the IRS in cases not involving federal taxes, and in which the United States is not a party, requiring them to appear in court to produce official documents and records or to testify with respect to matters which have come to their attention in their official capacity.

Section 301.9000-1, 26 C.F.R., provides that in such cases the internal revenue officer should appear in court and respectfully decline to produce the records or to give the testimony called for on the ground that he/she is prohibited therefrom by the Treasury Regulations. Instructions have been issued to IRS personnel regarding these procedures. In most cases, if there is sufficient time, the Commissioner will issue specific instructions to the employee and request that these be exhibited to the United States Attorney.

The validity of the Treasury Regulations has been upheld and approved by the Supreme Court, *Boske v. Comingore*, 177 U.S. 459 (1900); *cf. Touhy v. Ragen*, 340 U.S. 462 (1951), involving a subpoena served upon an employee of the Department.

In the event the IRS employee is served with a subpoena and contacts the United States Attorney for the purpose of protecting his/her interests and those of the government, the United States Attorney should appear, if necessary, with the individual employee before the court out of which the subpoena was issued. The United States Attorney should also give notice of the subpoena matter to the Civil Trial Section, Eastern Region. If the necessity arises, the matters set out above should be submitted to the court. Frequently, this will not be necessary since experience has demonstrated that if this prohibition is explained to the attorney who is responsible for the issuance of the subpoena, the attorney will voluntarily release the IRS employee from responding without requiring the United States Attorney to seek the aid of the court.

6-5.400 Suits Involving Governmental Immunity From State and Local Taxes

The Tax Division is charged with the responsibility of representing the interests of government agencies and officers in contesting the improper imposition of state or local taxes. Requests for assistance frequently come directly from government contractors and members of the Armed Forces, as well as from government agencies. Because of their sensitive nature and the need for their close coordination, all such matters are handled directly by the Tax Division. All requests, whether to institute litigation or merely for advice or to persuade taxing authorities not to impose a tax, should be promptly referred to the Civil Trial Section, Eastern Region.

6-5.500 Claims of United States in Bankruptcy, Receivership, Probate, and Insolvency Proceedings -- Generally

The field offices of the IRS file proofs of claim for unpaid taxes in bankruptcy proceedings, state court receivership and insolvency proceedings, and probate proceedings. The Tax Division is ordinarily not notified of the filing of these claims and the United States Attorney may or may not be advised of the filing of a proof of claim. Where a controversy arises and the United States Attorney is requested to take any action or make a court appearance, the Chief of the appropriate Civil Trial Section should be notified as soon as possible, by telephone if necessary, and prior to the filing of any pleading or the making of any court appearance, except in direct referral bankruptcy cases. *See* USAM 6-5.522.

If an objection to a proof of claim is filed, no action should be taken without prior consultation with the Tax Division. The necessity for prompt action will frequently require a telephone consultation with the Chief of the appropriate Civil Trial Section.

6-5.520 Bankruptcy Proceedings

It is the practice in bankruptcy cases for the District Directors through the Special Procedures Function to file proofs of claim for taxes. The United States Attorney may be furnished with a copy of the proof of claim. In many cases this ends the matter so far as the United States Attorney is concerned because the claim will be allowed and paid by the trustee in bankruptcy as a matter of course from the bankrupt's estate to the extent that funds are available.

6-5.521 Contested Cases and Adversarial Proceedings

In contested cases and adversarial proceedings any pleading involving matters relating to the internal revenue laws should be promptly forwarded to the Tax Division, the District Counsel and the IRS Special Procedures Function.

6-5.522 Directly Referred Cases

The IRS will directly refer to the United States Attorneys bankruptcy matters involving:

- A. Complaints or other pleadings to sell property;
- B. Cash collateral hearings;
- C. Conversion from chapter 11 or 13 to chapter 7, or dismissal of chapter 11 or 13 case;
- D. Motions to compel distribution and accounting;
- E. Motions to pay taxes or stop pyramiding of taxes;
- F. Motions for a more particularized disclosure statement;
- G. Motions for relief from the automatic stay to permit commencement or continuation of proceedings before the United States Tax Court;
- H. Objection to confirmation of a plan;
- I. Motion by the United States to vacate or modify the automatic stay where all the other parties agree to the relief requested;
- J. Motion for order compelling production of records and/or filing of pre-petition tax returns;
- K. Motion for order compelling the filing of post-petition tax returns;

L. Motion for order requiring segregation and/or deposit of post-petition trust fund taxes.

In a number of Districts, IRS attorneys have been appointed Special Assistant United States Attorneys under a program for handling bankruptcy cases. In Districts having such a program, the following matters will also be directly referred to the United States Attorney:

- A. Cases involving dischargeability (except those involving fraud or novel issues);
- B. All motions to lift the stay;
- C. Turn-over hearings where the government's defense is limited to adequate protection; and
- D. Objections to proofs of claims (except those involving responsible person liability, the merits of the debtor's tax liability, evidentiary hearings as to disputed matters, or important or novel issues).

All other tax-related bankruptcy matters will be referred by the IRS to the Tax Division, including matters required to be reviewed by the IRS National Office, cases in which the debtors are prominent individuals or major corporations, and any matters not subject to the direct referral procedure.

6-5.523 Appeal to United States District Court

The United States Attorney should promptly notify the Chief of the appropriate Civil Trial Section by telephone and advise the District Counsel of adverse decisions, and take the necessary steps, including the filing of a notice of appeal to protect the government's interest. The time for appeal from an order of a bankruptcy court is only 10 days, but the time may be extended by the court for an additional 20 days. Because of this short time limit, it is usually advisable for the United States Attorney to obtain an extension of time concurrently with advice of the matter to the Tax Division.

The decision on whether to appeal an adverse bankruptcy court decision is made by the Tax Division, and appeals for such decisions are handled by the Tax Division. As to the procedure for appeals from orders of a United States District Court, see USAM 6-5.720.

6-5.524 Reorganization Proceedings

The IRS District Counsel will directly file an acceptance or rejection of a plan of reorganization after notifying the United States Attorney. The Tax Division will be alerted by District Counsel if the debtor is a prominent individual or major corporation and will be consulted in the event the Tax Division is involved in litigation that would be affected by the plan.

6-5.530 Receivership Proceedings

Where receivers for the taxpayer are appointed in a state or federal court, the IRS immediately assesses any tax owing and files proofs of claim, as provided by 26 U.S.C. § 6871(a). In such cases the receivership court has jurisdiction to hear and determine objections to the merits of the tax claim. The priorities of the United States in receivership proceedings are asserted under 31 U.S.C. § 3713.

Whenever a contest develops as to the merits or priority of the claim, the United States Attorney should notify the Tax Division immediately and furnish all relevant pleadings and information. In such proceedings in state courts, the United States is generally required to abide by the procedural rules and time limits of the court.

6-5.540 Probate Proceedings

Where assessments have been made against the decedent in his/her lifetime, or are made thereafter, notice of the assessment in the form of a proof of claim is brought to the attention of the personal representative of the decedent. The United States Attorney may be furnished with a copy of the proof of claim. Generally, such a claim is allowed and paid in due course of administration and no further questions arise.

When further action to collect the claim is desired, the District Counsel will request the Tax Division to take such action. If the request is approved, the Tax Division will send appropriate instructions and pleadings to the United States Attorney to be filed and a discussion of the facts and the law involved.

Occasionally it will be necessary for the United States Attorney to seek to control action of the personal representative through the processes of the probate court. Sometimes, if there is insolvency, the threatened action of the personal representative (such as failure to recognize the government's priority) can be discouraged by calling his/her attention to the provisions of 31 U.S.C. § 3713. In other cases, the supervisory authority of the probate court, provided by most state codes or statutes, will ordinarily be adequate.

Whenever a contest develops, or whenever it becomes necessary to compel the personal representative to act on a claim of the United States, the United States Attorney should notify the Chief of the appropriate Civil Trial Section and furnish any papers or information which may be germane to the question raised. Because of the differences in probate law in the several states, it is the general policy of the Tax Division to rely heavily in probate court proceedings on the experience of the United States Attorney concerning the laws of that jurisdiction.

6-5.550 Insolvency Proceedings

There are various forms of insolvency proceedings in state courts, the most frequent of which is an assignment for the benefit of creditors. Where proofs of claim are filed in such proceedings and litigation arises, 31 U.S.C. § 3713, relating to priorities, is applicable. Where a contest develops, the United States Attorneys should notify the Tax Division prior to taking any action and furnish all relevant pleadings and information.

6-5.600 Suits for Refund of Taxes Paid -- Generally

The six Civil Trial Sections and the Court of Federal Claims Section are responsible for defending suits brought against the United States for refund of taxes alleged to have been improperly assessed and collected. The technical nature of the issues involved and the nationwide distribution of the suits require a close coordination among the appropriate Civil Trial Section, the IRS, and the USAO. In those cases defended by a Civil Trial Section, the appropriate USAO will receive information copies of the proceedings from that section.

6-5.620 Responsibilities of United State Attorney on Receipt of Complaint

The United States Attorney is responsible for sending a copy of all complaints filed against the United States in tax refund suits immediately to the Tax Division, the local IRS District Counsel, and the Internal Revenue Service Center. In tax refund suits involving the 100-percent penalty imposed by 26 U.S.C. § 6672, the complaint should be forwarded to the District Director to the attention of the Special Procedures Function rather than to the Service Center.

6-5.621 Copies to Tax Division

The memorandum accompanying the copies of the complaint sent to the Tax Division should state the date when the complaint was served and filed.

6-5.622 Copies and Call to Service Center

It is essential that the Internal Revenue Service Centers be given the earliest possible notice that a tax refund suit has been filed with the United States District Court. This is necessary because the IRS must, in most cases, assemble its administrative files, forward them to Washington, D.C., and prepare an analysis of the government's litigating position within the 60 days provided for serving an answer under the Fed. R. of Civ. P.

No cover letter or memorandum need accompany the complaint sent to the Service Center, but it is essential that the envelope bear the notation REFUND LITIGATION CASE.

Contemporaneously with mailing a copy of the complaint to the Service Center, a telephone call should be made to the appropriate Service Center, informing the personnel there that a suit has been filed in the United States District Court and the following information should be furnished:

- A. The name and address of the taxpayer-plaintiff;
- B. Type of tax by form number and the taxable period involved, e.g., Form 1040 for the calendar year 1990;
- C. Employer identification number or social security number, if available; and
- D. The Civil Action Number.

6-5.700 Procedure Upon Lower Court Rendering a Favorable Decision -- Taxpayer Appeal

When a case is decided in favor of the government, the United States Attorney should furnish the Tax Division with a copy of a notice of appeal or cross-appeal filed by an adverse party as soon as possible (preferably within 5 days of the filing of the notice).

6-5.712 Case Transfer to Appellate Section

If an appeal is noticed, the case is then transferred by the Civil Trial Section to the Appellate Section of the Tax Division.

6-5.720 Adverse or Partially Adverse Decisions

If the case was tried by an Assistant United States Attorney, the pertinent documentary material and a recommendation concerning appeal should be forwarded to the appropriate Civil Trial Section.

If the adverse decision is rendered in a state court, the United States Attorney should advise the Tax Division as each step to perfect an appeal is completed. For a further discussion on appeals, see USAM Title 2 (Appeals).

The Civil Trial Section prepares its own recommendation on whether to appeal. The recommendations and files are then sent to the Appellate Section for further review and recommendation to the Solicitor General.

When a judgment or order adverse to the United States is entered which requires the United States to make a tax refund or credit, pay attorneys' fees or costs or make some other payment, the United States Attorney should furnish to the Civil Trial Section two certified copies of each such judgment or order so that payment may be made promptly if the Solicitor General decides that an appeal will not be prosecuted or if the United States is unsuccessful on appeal.

6-5.722 Filing of Notice of Appeal by the Government

Until the Solicitor General decides whether an appeal should be prosecuted, the United States Attorney is responsible for protecting the government's interest in the case by filing a timely notice of appeal and for obtaining any needed extensions for docketing the appeal.

6-5.723 When the Solicitor General Approves an Appeal

If the Solicitor General decides that an appeal will be authorized, the Civil Trial Section is responsible for taking such steps as may be necessary to perfect an appeal under the rules of the particular court of appeals, and may request the assistance of the United States Attorney.

6-5.724 When the Solicitor General Declines to Appeal

If the Solicitor General decides that an appeal will not be prosecuted, the Tax Division advises the United States Attorney immediately of this decision. The case is then transferred to the Post Litigation Unit of the Tax Division for processing and prompt payment of the judgment, as set forth in USAM 6-7.200.

6-5.725 Applications for Attorneys' Fees and Litigation Expenses

When applications are filed for attorneys' fees and related expenses, copies should be forwarded to the appropriate Civil Trial Section and to District Counsel. The transmittal letter or memorandum to the Tax Division should indicate that a copy has been furnished to District Counsel.